*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 7347 of 1993

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% 16-12-2005

Sri Ramanama Sankirthana Sangham,

Vijayawada & 3 others Petitioners

Vs.

$ Government of Andhra Pradesh,

rep. By its Secretary for Revenue (Endowments),

Secretariat, Hyderabad & 3 others Respondents

! Counsel for petitioners: Sri P.M.Gopal Rao

^ Counsel for respondents: G.P. for Endowments

< Gist:

>Head Note

?

AIR 1971 SC 966

2 AIR 1989 SC 2126

[3] AIR 1985 SC 973

[4]AIR 1978 AP 121

[5] AIR 1989 AP 81

[6] AIR 2005 SCW 2317

[7] (2002)8 SCC 481

[8] (2005)6 SCC 537

[9] AIR 1986 SC 180

[10] (1999)7 SCC 666

[11]AIR 1971 SC 891

[12](1995)3 ALT 271

[13](2000)6 ALT 305

[14](1996)8 SCC 298

[15](2002)1 ALT 32

[16](2003)6 SCC 545

[17]AIR 1987 SC 1239

[18](2005)6 SCC 166

[19](2005)6 SCC 321

[20]1998(3) An.W.R. 195

[21]1991(II) ALT 321

[22] (2004)3 ALT 44

[23](2004)2 SCC 590

[24](2004)8 SCC 524

[25]AIR 1987 SCI 71

26 (2000)7 SCC 425

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.7347 of 1993

JUDGMENT:

The validity of G.O.Ms.No.433, Revenue (Endowments-I) Department, dated 5.5.1993, in classifying and grading among others, the petitioner – institutions, for the purpose of appointment of Executive Officers and in directing their appointment to the petitioner – institutions, is under challenge in this writ petition. The petitioners also seek a direction that Sections 15 and 29 of the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1987 (A.P. Act 30 of 1987), be declared null and void.

Facts, to the extent necessary for this writ petition, are that all the four petitioners are societies registered under the Societies Registration Act (Act 21 of 1860). The 1st petitioner was registered on 5.1.1961 and had earlier filed W.P.No. 405 of 1990 which was eventually withdrawn on 27.02.1997. The 2nd petitioner was registered in the year 1949, and the 3rd petitioner in 1956. The 4th petitioner, which was registered on 12.10.1920, was exempted, under G.O.Ms.No.428, dated 19.4.1972, from the provisions of the Endowments Act in so far as it related to appointment of trustees and executive officers.

The petitioners contend that their dominant objects are neither religious nor charitable but are incidental to several other vital functions, that the management of their institutions is vested in a governing body elected by the members, the day to day executive functions are discharged by an elected secretary or joint or assistant secretary and that properties belonging to the society were never dedicated or endowed to the public. It is contended that, without an enquiry, without consulting the petitioners and without examining as to whether the petitioners could afford the luxury of having to employ paid executive officers, the 1st respondent, on the executive officers' association's request for upgradation and promotion, and on the recommendation of the Commissioner, issued G.O.Ms.No.433 dated 5.5.1993.

A counter affidavit is filed, on behalf of the respondents, wherein it is stated that petitioners 1 and 2 are public religious institutions and petitioners 3 and 4 are public charitable institutions, that all the four institutions were published under Section 6(b) of Act. 30 of 1987, registered under Section 38 of A.P. Act 17 of 1966 and that they are under the administrative control of the deputy commissioner, endowments, Kakinada. It is stated that the 1st petitioner, which is under the management of a self-constituted committee, was exempted from the operation of Sections 15 and 29 of Act 30 of 1987 for a period of three years, under G.O.Ms.No.106 dated 23.1.1990, and the exemption period has since expired. Petitioners 2 to 4 are also said to be under the management of self-constituted committees. While the 4th petitioner was granted conditional exemption from the operation of Sections 15 and 29, the 2nd and 3rd petitioners are not covered under any exemption. It is stated that the self-constituted managing committees do not enjoy legal status, that the first petitioner's managing committee was found guilty of committing various lapses in administering its affairs, that the commissioner of endowments had issued a show cause notice in proceedings dated 22.2.1990, and that after considering their explanation it was decided to appoint an executive officer to set right the affairs of the 1st petitioner – institution, aggrieved by which the 1st petitioner filed W.P.No.405/90 to restrain the respondents from appointing an executive officer or to have a person or trust board appointed to the institution. It is stated that the petitioners' management had themselves filed applications, seeking grant of certificates of registration, under the provisions of the Endowments Act and had thereby acquiesced to the jurisdiction of the endowments department. It is further stated that these institutions were registered under the provisions of the Endowments Act, that the petitioner – managements were rendering accounts, submitting statutory returns, paying departmental contributions and audit fees and that their accounts were being audited by the L.F. Accounts department. The contention that a proposal is pending for granting exemption, under Sections 15 and 29 of the Act, to the 2nd respondent is denied. Conditional exemption granted to the 4th respondent, under G.O.Ms.NO.428 dated 19.4.1972, is however admitted. It is contended that the petitioner institutions had been established for the benefit of the general public, were funded with contributions from the general public, that the byelaws, framed by the self-constituted managing committees, has no legal effect since, under Section 42(1), the provisions of the Act are given overriding effect over the bye-laws. It is stated that Section 29(1)

of Act 30/87 provides for constitution of institutions into groups for the purpose of appointment of executive officers to these institutions and that the government, in G.O.Ms.No.433 dated 15.5.1993, had constituted these institutions into groups. The contention that the Government had issued the said G.O, at the instance of the executive officers' association, only for the purpose of upgradation and promotion, without enquiry and without consulting the petitioners is denied. It stated that the cadre strength of executive officers was fixed in G.O.Ms.No.433 dated 15.5.1993, on the basis of the income of each institution and that Section 29 of the Endowment Act does not provide either for an enquiry or for consultation before grouping of institutions. It is contended that since all the petitioner institutions are registered under and are governed by the provisions of Act 30 of 1987, the provisions of the Societies Registration Act has no application to such public religious and charitable institutions.

Sri P.M.Gopal Rao, learned counsel for the petitioners, in his written submissions, would contend that G.O.Ms.No.433 dated 5.5.1993 sanctions additional posts of executive officers and directs the Commissioner to appoint executive officers, to the institutions mentioned in the schedule to the G.O, including to the petitioner – institutions. The said G.O. accords sanction for 81 Executive Officers Grade-I posts, 239 posts of Executive Officers Grade-II and 421 posts of Executive Officers Grade-III. The G.O. specifically states that it is passed on the proposals of the commissioner of endowments and after considering the viability of the institutions. Under the said G.O., the Commissioner is directed to draw the salaries and allowances of executive officers and to recover the same from the institutions and since this direction affects the petitioner societies, the present writ petition has been filed. The contentions of the learned counsel can broadly be classified, as under:

i. Relevant factors were neither considered nor examined by the 1st respondent, while issuing the impugned G.O., including that the appointment of executive officers was not in the interest of the institutions, that the institutions could not afford to pay salaries to executive officers and that it violates Section 57(2) of the Endowments Act;

ii. The impugned G.O. violates the petitioners fundamental rights, under Article 19(1)(c) of the Constitution of India, to carry on administration

as per their bye laws;

iii. Their fundamental rights, under Article 19(1)(g) of the Constitution of India, to carry on their occupation, as per their own bye laws, through their elected general secretary, is violated;

iv. The impugned G.O. is in violation of the provisions of the A.P. Societies Registration Act 2001 (A.P. Act. 35/2001). Since Act 35/2001 is a subsequent and special enactment dealing with societies whereas the Endowments Act is a general enactment, dealing with all charitable or religious institutions, whether societies or other bodies or association of persons, the subsequent special law will prevail over the earlier general law.

Learned counsel, would submit that the petitioner-institutions have a right to preserve their constitution, under Article 19(1) (c) of the Constitution of India, and would rely on **Damayanti v. Union of india, Asom Rastrabhasa Prachar Simiti v. State of Assam, Daman Singh v. State of Punjab, Seethapathi Nageswara Rao v. State of A.P., and M.Raja Reddy v. State of A.P.** in this regard. Learned counsel would refer to, **Zoroastrian Co-operative Housing Society Ltd. V. District Registrar, Cooperative Societies (Urban)** wherein it was held that Cooperative Societies, being creatures of the Cooperative Act, are bound by the restrictions under the said Act, and contend that this principle would not apply to Societies registered under the Societies Registration Act as they are autonomous bodies.

Learned counsel would submit that the petitioners are guaranteed the fundamental right to carry on their occupation, in accordance with their bye laws, under Article 19(1) (g) of the Constitution of India, and would refer to **T.M.A. Pai Foundation v. State of Karnataka, and P.A. Inamdar v. State of Maharashtra** to contend that since the nature of its objects is carrying on charitable and other spiritual activities, the petitioners must be held to be carrying on an occupation and, except for the permissible restrictions under Articles 19(4) and 19(6), the fundamental rights of the petitioners to form an association and carry on their occupation cannot be violated, and that appointment of Executive Officers to the petitioner-institutions would be an unreasonable restriction on their fundamental rights to run their administration and in carrying on their affairs in accordance with law.

Learned counsel would submit that the A.P. Societies Registration Act 2001 provides for the internal management of the affairs of the society and since the byelaws provide for the same, the impugned G.O. must be held to be inoperative being inconsistent with the provisions of the A.P. Societies Registration Act 2001. According to the Learned counsel since both the Endowments Act and the Societies Registration Act are laws made by the State Legislature, the A.P. Societies Registration Act, 2001, being the later law would prevail over the provisions of the earlier law to the extent of inconsistency. Learned counsel would contend that neither the fundamental rights guaranteed under the Constitution of India nor the statutory rights conferred under the A.P. Societies Registration Act 2001 can be waived, since there is no estoppel against the law, and would rely on **Olga Tellis v Bombay Municipal Corporation** in this regard. Learned counsel would submit that the earlier W.P.No.405/90 was filed in January 1990 as the period of exemption, previously granted to the 1st petitioner, was about to expire and as no action was taken regarding its further extension, and that this Court, while granting an order of status quo on 22.1.1990 had directed the government to dispose of the application dated 28.12.1989. Thereafter, on the recommendations of the Commissioner, the Government issued G.O.Ms.No.106, Revenue (Endts.IV) Department dated 23.1.1990 granting exemption to the 1st petitioner from the operation of Sections 15 and 29 of the Endowments Act for a period of three years from that date. The petitioner was called upon, vide notice dated 22.2.1990, to show cause as to why an executive officer should not be appointed and, by order dated 22.2.1990, the inspector of endowments was appointed to take complete charge of the institution at once. The 1st petitioner filed a revision petition and the government, vide proceedings dated 27.6.1990, granted interim stay of operation of the order of the Commissioner dated 19.6.1990 and subsequently issued G.O.Ms.No.433, (Revenue Endts-I) dated 5.5.1993. According to the learned counsel, the present writ petition came to be filed challenging the constitutional validity of certain provisions of the Endowments Act and the applicability of the provisions of Act 30/97 with regards appointment of trustees and executive officers to the petitioner institutions, and since this Court granted stay, in W.P.M.P.No.9219 of 1993, on 21.7.1993, the earlier writ petition in W.P.No.405 of 1990 was subsequently withdrawn on 27.2.1997. Learned counsel would submit that in the revision filed by the petitioner, against the earlier

order dated 19.6.1990, the government, by order dated 13.3.1997, had directed appointment of a trust board. Both the orders of the commissioner dated 19.6.1990 and 13.3.1997 were challenged in W.P.No.9884 of 1997 and the said writ petition was allowed on 20.3.2003 quashing both the orders. Learned counsel would submit that in the aforesaid judgment it was held that the order of the Commissioner dated 19.6.1990 was incompetent since it was passed at a time when the institution was exempted from sections 15 and 29 of the Act and that the order of the government was perverse apart from being illegal. Against the order in W.P.No.9884 of 1997, the government filed W.A.No.1098 of 2003 which was dismissed by the Division Bench on 8.8.2003. It is contended that since the show cause notice had merged with the orders of the Commissioner dated 19.6.1990 appointing the Executive Officer and this order dated 19 06.1990 was quashed, no reliance could be placed by the respondents on their earlier orders nor could maladministration be attributed to the 1st petitioner herein. Learned counsel would submit that petitioners 2 and 3 are arya vysya institutions recognized as denominational, for the purpose of protection under Article 26(d) of the Constitution of India, and since this question is pending before a Division Bench in L.P.A.16/1979, consequent on the order of remand passed by the Supreme Court in **Kanyaka Parameswari Annasatram Committee v. Commissioner Hindu Religious and Charitable Endowments Department,** it is not necessary for this Court to examine this question in the present writ petition.

Learned Government Pleader for Endowments would submit that having registered themselves under Section 38 of A.P. Act 17 of 1966 and published under Section 6 of Act 30 of 1987, it is not open to the petitioners to contend that the Endowments Act has no application. He would submit that the petitioners cannot take advantage of the bye-laws, made by their self constituted managing committees, since Section 42 of Act 30 of 1987 gives overriding effect to the provisions of the Act. Learned Government Pleader would submit that Section 27 of A.P. Act 17 of 1966 also dealt with appointment of executive officers and the constitutional validity of the said provision was upheld by the Supreme Court in **Kakinada Annadana Samajam v. Commissioner of Hindu Religious & Charitable Endowments, Hyderabad**. He would submit that the impugned G.O. merely classifies and fixes the grades and strength of executive officers grade I, II and III depending on the annual income, cadre of officers to be appointed etc.

It is well settled that unless compelled to do so this Court, under Article 226 of

the Constitution of India, would not, normally, adjudicate the vires of statutory provisions. A Full Bench of this Court in **Andhra Pradesh Power Diploma Engineers' Association v. Andhra Pradesh State Electricity Board** held that courts would not enter into academic discussions regarding the constitutional validity of statutory provisions unless such a decision becomes necessary for the purpose of the decision in the case. In **Government of A.P. v. Medwin Educational Society,** a Full Bench of this Court held:

"We remind ourselves of the settled principle of Constitutional adjudication that Constitutional issues should not be considered by the judicial branch as an academic issue. There is also a settled principle that if a *lis* could be decided on grounds other than constitutional issues the *lis* should be decided on the other issues"

It is wholly unnecessary for this Court to examine the vires of Section 15 and 29 of Act 30 of 1987, or to deal with the other contentions of Sri P.M. Gopal Rao, learned counsel for the petitioner, since the writ petition is required to be disposed of on the short ground that the Commissioner, is required to take into consideration the factual position relating to each individual charitable or religious institution and after proper application of mind exercise his discretion in deciding as to whether or not an executive officer is required to be appointed thereto.

The rival contentions in this regard are referred to in brief. Sri P.M.Gopal Rao, learned counsel for the petitioner, would submit that the power, to appoint executive officers, has to be exercised on relevant date, facts and materials and on an examination as to whether there is any necessity to appoint an executive officer to the subject charitable or religious institution. Learned counsel would submit that the relevant consideration is the interest of the institution alone and not opening avenues of promotion to members of the executive officers association. Learned counsel would rely on **Pavani Sridhara Rao v. Govt. of A.P. , K.V. Rama Sastry v. Govt. of A.P., Legislative Affairs and Justice, Law Dept and Chandra Singh v. State of Rajasthan.** Learned counsel would contend that the impugned G.O. is also in violation of the financial provisions in Section 57(2) of Act 30 of 1987 as the expenditure, relating to the salaries and allowances of executive officers, when added to the already existing establishment charges incurred for other employees, would exceed the limits prescribed. Learned counsel would contend that, before issuing the impugned G.O, the respondents were duty bound to consider the

objections of the institutions, in the light of their budgets, annual reports, their future plans for development and their existing liabilities, and then decide as to whether an executive; officer should be appointed and since the impugned G.O. was passed merely on the recommendations of the Commissioner, it is required to be set aside on the ground of non-application of mind. Learned counsel would contend that, before appointment of executive officers, the respondents ought to have given the petitioners an opportunity of being heard and would rely on **Baldev Singh v. State of Himachal Pradesh, R. Murali v. Kanyaka Parameswari Devasthanam and Canara Bank v. V.K. Awasthy,** in this regard.

Learned counsel would submit that the only reason stated, in the impugned G.O, for fixing the strength of executive officers, is to regulate fiscal discipline in charitable and religious endowments. According to the learned counsel appointment of executive officers, by the Commissioner or the Government, and in paying them huge salaries would not be conclusive to fiscal discipline and on the other hand would mulct the institutions with additional financial liability, which they could ill afford. Learned counsel would submit that the executive functions, relating to the petitioner-institutions, are being discharged by a secretary on an honorary basis and if he is substituted by a paid executive officer, it would needlessly burden and adversely affect the financial position of the petitioner-institutions.

On the other hand, learned Government Pleader would submit that Section 29(3) of Act 30 of 1987, relating to appointment of executive officers, is mandatory and that the petitioners have acquiesced to the jurisdiction of the respondents under the provisions of the Act and are therefore estopped from contending that the provisions of the Act are not applicable to them. He would submit that the impugned G.O. has been made in exercise of the powers conferred under Section 29(3) of the Endowments Act. According to the Learned Government Pleader, in view of Section 29(5), the executive officer appointed by the government, on the basis of the recommendations of the Commissioner, is only to assist the governing body and to ensure that the provisions of the Act are complied with. Learned Government Pleader would refer to Section 29 and Section 8 of the Endowments Act in this regard.

Before examining this question, the provisions of the Andhra Pradesh

Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30 of 1987), and that of the impugned G.O.Ms.No. 433 dated 05.05.1993 are to be taken note of.

Act 30 of 1987 is an Act to consolidate and amend the law relating to the administration and governance of Charitable and Hindu Religious Institutions and Endowments in the State of Andhra Pradesh. Section 2(12) defines 'endowment administration fund' to mean the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund established under sub-section (1) of Section 69 of the Act. Section 2(13) defines 'Executive Officer' to mean an officer appointed as such under any of the provisions of the Act.

Sections, 8, 15 and 29 read thus:-

8. Powers and functions of Commissioner and Additional Commissioner:-

1. Subject to the other provisions of this Act, the administration of a charitable and Hindu religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.

2. Without prejudice to the generality of the foregoing provisions, the Commissioner shall exercise the powers conferred on him and perform the functions entrusted to him by or under this Act in respect of such institutions or endowments in the State as are included in the lists published under clause (a) clause (d) and clause (e) of Sec.6.

3. The powers and functions of the Additional Commissioner shall be such as may be determined by the Government from time to time.

4. The Commissioner may delegate to a Deputy Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act including the powers and functions of an Assistant Commissioner which may be exercised or performed by the Commissioner under sub-section (5) but not including the power and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institutions or endowments or any class or group of institutions or endowments in the State subject to such restrictions and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

5. The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant

Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.

6. Notwithstanding anything in Sections 10 and 11, the Commissioner may, by order in writing, declare that the exercise and performance of all or any of the powers or functions by the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise any power or perform the functions so excepted.

Section 15. Appointment of Board of Trustees:

(1) In respect of a charitable or religious institution or endowment included in the list published under clause (a) of Section 6-

a. whose annual income exceeds rupees ten lakhs, the Government shall constitute a Board of Trustees consisting of nine persons appointed by him;

b. whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of Seven persons appointed by him.

(2) In respect of charitable or religious institution or endowment included in the list published under clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board of Trustees consisting of Seven persons appointed by him

(3) In the case of any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him:

Provided that the Assistant Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees.

Section 29: Appointment and duties of Executive Officer:-

1. The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed.

2. For each such group of charitable or religious institutions or endowments there shall be appointed an Executive Officer for exercising the powers and discharging the duties conferred on him by or under this Act.

3. The Government may for purpose of this Act, constitute such grade of Executive Officers, prescribing their appointing authorities and authorize them to exercise such powers and discharge such duties as may be prescribed:

Provided that twenty percentum of vacancies in each grade of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade.

Provided further that, it shall be competent for the Government to appoint a Regional Joint Commissioner, a Deputy Commissioner or Assistant Commissioner as an Executive Officer.

4. The Executive Officer appointed and exercising the powers and discharging the duties shall be a person professing Hindu religious and shall cease to exercise those powers and discharge those duties when he ceased to profess that religion.

5. (a) The Executive Officer appointed under this section shall be under the administrative control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee, from time to time;

(b) The Executive Officer shall, subject to such restrictions as may be

imposed by the Government-

(i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, moneys, funds and other properties of the institution or endowments;

(ii) arrange for the proper collection of income and for incurring of expenditure;

(iii) sue or be sued by the name of the institution or endowment in all legal proceedings;

Provided that any legal proceeding pending immediately before the commencement of this Act, by or against an institution or endowment in which any person other than an Executive Officer is suing or being sued shall not be affected;

(iv) deposit all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders cheques against such moneys;

Provided that such deposit may be made in the treasury if the rate of interest offered by it is higher than that of any bank.

v. have power in cases of emergency, to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or the doing of which is in his opinion, necessary for the preservation of properties of the institution or endowment or for the service or safety of the pilgrims resorting thereto and to direct that the expenses of executing such work or the doing of such act shall be paid from the funds of the institution or endowment;

Provided that the Executive Officer shall report forthwith to the trustee any action taken by him under this sub-clause and the reasons therefor.

c. The Executive Officer shall, with the prior approval of the trustee, institute any legal proceedings in the name of the institution or endowment, or defend any such legal proceedings;

d. [where there is no Executive Officer in respect of any charitable or

religious institution or endowment, the trustee or the chairman of the Board of Trustees or any employee of any Institution or Endowment duly authorised by the Commissioner in this behalf shall exercise the powers perform the functions and discharge the duties of an Executive Officer.]

(6) The Executive Officer appointed under this section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government. The salary allowances, pension and other remuneration of the Executive Officer shall be paid in the first instance out of the Consolidated Fund of the State [and later recovered from the Endowments Administration Fund established under Section 69 of this Act.]

Chapter VIII relates to finance. Section 65 thereunder relates to liability of institution or endowment to pay annual contribution and audit fee. Under sub-section (1) thereof, in respect of services rendered by the government and their employees, every charitable or religious institution, whose annual income is not less than rupees five thousands, shall be liable to pay to the government annually from the income derived by it, such income (of the actual expenditure incurred towards such services subject to a maximum of fifteen per cent) of the annual income as may be prescribed. Prior to Amendment Act 34 of 1997, which came into force with effect from 1.4.1998, the salary, allowances and other remuneration of the executive officer, an employee of the government, was required to be paid in the first instance from out of the consolidated fund of the State and later recovered from the subject institution or endowment. Pursuant to the amendment by Act 34 of 1997, while the salary, allowances etc., of the executive officer, are still required to be paid in the first instance from out of the consolidated fund of the State, it is to be later recovered from the endowments administration fund established under Section 69 of the Act. From the statement of objects and reasons of Amendment Act 34 of 1997, it is clear that since the salary, allowances etc., payable to an executive officer is to be recouped from the Endowment Administration Fund established under Section 69 of the Act, on par with other government employees of the endowments department, the percentage of contribution payable by institutions under Section 65 of the Act was increased from 7% to 15% of its annual income. Section 69 relates to establishment of Endowment Administration Fund to be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund to which, amounts are required to be credited including under section 69(2)(a)(iii), the contributions and audit fee payable under sub-section (1) of Section 65.

G.O.Ms.No.433 dated 5.5.1993 relates to fixation of cadre strength of executive officers Grades I, II and III. Among the references cited, is the representation of the President of A.P. State Endowments Executive Officers Association dated 9.11.1991. It is seen from the said G.O. that the government, in G.O.Ms.No.262 dated 10.3.1992, had issued orders approving the classification of institutions for appointment of executive officers. The Commissioner of Endowments, vide letter dated 2.9.1992, is said to have furnished the particulars of income of institutions in each district for determining the cadre strength of the executive officers. After carefully considering the proposals of the Commissioner of Endowments and the viability of the institution for payment of salaries, allowances and other remuneration, the government fixed the cadre strength of executive officers grade I as 81, Grade II at 239 and Grade III at 421. It is stated that the cadre was fixed, with a view to regulate fiscal discipline of the institutions, depending on the income of the temple/institution as per the classification. Under the said G.O., the Commissioner was directed to draw the salaries and allowances of executive officers and to recover the same from the institutions.

Executive Officers, appointed under Act 30 of 1987, function under the administrative control of the Board of trustees of the institution or endowment and are responsible for carrying out all lawful directions issued by such trustees, from time to time. Section 29 (5) (a) requires the Executive Officer to work under the control of the trustee. Section 29 (5) (d) provides that where there is no Executive Officer in respect of any charitable or religious institution or endowment, the trustee or the Chairman of the Board of Trustees, as the case may be, of the institution of endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer. In other words, where there is no Executive Officer, the trustee has to administer the institution. Act 30 of 1987 does not however provide that till such time, as a Board of Trustees is constituted, the Executive Officer should administer the religious or charitable institution. The administration of the religious or charitable institution does not automatically vest in the Executive Officer and he does not automatically get the right to administer, where no Board of Trustees have been appointed for such religious or charitable institution. (**G. Rajendranath Goud Vs. Commissioner, Endowment Department.**

The power of general superintendence and control conferred on the Commissioner

under Section 8 of the Endowments Act, includes the power to appoint executive officers for religious and charitable institutions listed under Section 6 of the Act. **In K.Sriramamuthy v. Commissioner of Endowments**, this court held:-

"……I find that the entrustment of power under Section 8 to the Commissioner to administer all charitable and Hindu religious Institutions and Endowments and the specific power 'to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found to exist' is wide enough to take in the power of appointment of executive officers of temples.

. ……. I am of the opinion that since Section 29 of Act 30 of 1987 as it stood originally did not specifically deal with the power of appointment of Executive Officers, the heading of that section shall not be considered as determinative of the import of that provision – Samad v. A.P.S.R.T.C. (1983 LIC 1513 – APHC – DB) nor shall that heading be interpreted in such a manner as to restrict the power of administration of Religious Institutions which is within the purview of the Commissioner under Section 8 of the Act.

…… The power of administration has always been understood to take in the power of appointment of officers and employees. The Supreme Court has repeatedly held that the right "to administer educational institutions of their choice", conferred by Article 30(1) of the Constitution of India on minorities necessarily takes in the power of appointment of heads of institutions, teachers, etc., It is almost axiomatic that the power of administration cannot be effective unless it takes in the power to appoint instrumentalities, through whom the administration has to be carried out. I am therefore of the view that Section 8 of the Act is comprehensive enough to empower the Commissioner to appoint Executive Officers of Religious Institutions and Endowments, which are governed by the Act. ……."

The power to appoint Executive Officers, is normally exercised for the purpose of ensuring better and efficient administration and management of the institution or endowment. (**Kakinada Annadana Samajam[11]**). The power of general superintendence and control which inheres in the Commissioner and Additional Commissioner under Section 8 of the Act is conditioned by a statutory instruct that such a power of superintendence and control is for the purpose of ensuring that the institutions and endowments are properly administered and their income is duly appropriated 'for the purpose for which they were found or exist'. The wide powers of superintendence and control consecrated on the Commissioner of Endowments cannot be understood as an uncanalised power of an infinite extent for absolute power there never is in a constitutional democracy. The power under Sec.8 of the Act is conditioned by a specific statutory instruct that sets out the limits of the superintendence of power conferred on the Commissioner. (**Shri Veerabhadra Swamy Temple, Bonthapally, Medak District v. Commissioner, Endowments**

Department).

Act 30 of 1987 does not mandate appointment of an Executive Officer for each religious endowment or charitable institution. It is for the Commissioner, in his discretion, to decide as to whether an executive officer is required to be appointed or not. The discretion, however, is to be exercised in a reasonable manner, in furtherance of and in accordance with the provisions of the Act and in public interest.

In **Union of India v. Kuldeep Singh,** the Supreme Court held:-

"…….. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C., in *Sharp* v. *Wakefield 1891 AC 173: (1886-90) ALL ER Rep 651 (HL)*). (Also see *S.G. Jaisinghani* v. *Union of India: AIR 1967 SC 1427*.)

I n **Clariant International Ltd. v. Securities & Exchange Board of India,** the Supreme Court; held:-

"The Board, further, having a discretionary jurisdiction must exercise the same strictly in accordance with law and judiciously. Such discretion must be a sound exercise in law. The discretionary jurisdiction, it is well known, although may be of wide amplitude as the expression "as it deems fit" has been used but in view of the fact that civil consequences would ensue by reason thereof, the same must be exercised fairly and bona fide. The discretion so exercised is subject to appeal as also judicial review, and, thus, must also answer the test of reasonableness.

In *Kruger* v. *Commonwealth of Australia* (1997(146 Aus LR 126) it is stated:

> "Moreover, when a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised. Reasonableness can be determined only by reference to the community standards at the time of the exercise of the discretion and that must be taken to be the legislative intention...."

"The discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion. (See *Narendra Singh* v. *Chhotey Singh* - (1983) 4 SCC 131)."

"A discretionary jurisdiction, furthermore, must be exercised within the four corners of the statute. [See *Akshaibar Lal (Dr.)* v. *Vice-Chancellor, Banaras Hindu University* (AIR 1961 SC 619) and also para 9-022 of de Smith, Woolf and Jowell: *Judicial Review of Administrative Action*, 5th Edn., p. 445.]"

Exercise of discretion must therefore be bonafide, fair, reasonable, within the four

corners of and in furtherance of the objects of the statute under which the power is conferred.

It is true, as contended by Sri P.M. Gopal Rao, learned counsel for the petitioner, that principles of natural justice are to be read into the unoccupied interstices of a statute and would require compliance where it results in civil consequences, (**Institute of Chartered Accountants of India Vs. L.K. Ratna, Baldev Singh Vs. State of Himachal Pradesh**[17]). It cannot however be stretched so far as to require the petitioners to be put on notice or to give them an opportunity of being heard before an executive officer is appointed to their institutions. The plea that appointment of an executive officer would cast an unnecessary financial burden on the petitioner – institutions resulting in civil consequences, may have been justified when the writ petitions were filed in the year 1993, since Section 29 (6) of Act 30 of 1987, (as it stood prior to its amendment by Act 34 of 1997 with effect from 1.4.1998), provided that the salary, allowances and other remunerations of an executive officer shall be paid in the first instance out of the consolidated fund of the State and later recovered from the institution of the endowment. After its amendment, (by Act 34 of 1997 with effect from 1.4.1998), Section 29(6) provides that while the salary, allowances and other remunerations of an executive officer shall be paid in the first instance out of the consolidated fund of the State, it shall later be recovered from Endowments Administration Fund established under Section 69 of the Act. Under Section 69(2)(a)(iii), the Endowment Administration Fund is to include contribution and audit fee payable under Section 65(1) of the Act. Under Section 65 (1), every charitable or religious institution, whose annual income is not less than Rs.5000/- is liable to pay to the Government, annually from its income, such contribution of the actual expenditure incurred towards such services, subject to a maximum of 15% of the annual income, as may be prescribed. This liability to pay annual contribution under Section 65(1) is irrespective of whether an executive officer is appointed or not and since the liability under Section 65(1) would not significantly change if an executive officer is appointed, the petitioner – institutions cannot be said to suffer civil consequences on the appointment of an executive officer to their institutions. Further, under Section 29(5)(a), an executive officer, appointed under the section, shall be under the administrative control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee from time to time. Appointment of an executive

officer would not therefore affect any of the vested rights of the petitioners nor can civil consequences be said to have resulted on such appointment, necessitating their being put on notice or being given an opportunity of being heard prior to such appointment. In view of the subsequent change in law, G.O.Ms.No. 433 dated 05.05.1993, to the extent it requires salaries, allowances and other allowances paid to the Executive Officers to be recovered from the institutions to which they are appointed, can no longer be enforced.

The impugned G.O, (G.O.Ms.No.433 dated 5.5.1993), is merely an order classifying institutions for the purpose of appointment of executive officers and does not, by itself, result in their being appointed to the petitioner - institutions. Sri P.M.Gopal Rao, learned counsel, for the petitioners, would submit that under para –4 of the said G.O. the Commissioner of endowments was requested to take necessary steps on various issues including naming the persons to be appointed against the posts of the executive officers, and while the impugned G.O.is couched in the form of a request, it is nonetheless a direction which the Commissioner is required to comply with and, but for the interim orders of this Court, the commissioner would have had no choice but to appoint executive officers to the petitioner – institutions. I am unable to agree. Section 8 of Act 30 of 1987 does not mandate and merely confers a discretion on the commissioner to appoint an executive officer. The impugned G.O., is in the nature of administrative/Executive instructions under Article 162 of the Constitution of India, and can only supplement and not supplant the provisions of Endowments Act and the rules and regulations made thereunder. It cannot therefore be read as placing any fetters on the discretion conferred on the commissioner under Section 8 of the Act. The impugned G.O. has necessarily to be read literally as a request by the government to the commissioner and it is for the commissioner, in exercise of his discretion under Section 8 of the Act, to take an appropriate decision with regards appointment of executive officers to the petitioner institutions.

I find considerable force in the contention of Sri P.M. Gopal Rao, learned counsel for the petitioner, that while exercising his discretion, the commissioner is required to apply his mind to the needs of each individual institution and thereafter decide as to whether or not an executive officer is required to be appointed thereto. In appointing Executive Officers to the subject religious or charitable institutions, the Commissioner must examine the relevant data, facts and materials, and apply his

mind to the question as to whether it is in the interest of the institution and in public interest to appoint an Executive Officer. The Commissioner should independently examine the case of each religious or charitable institutions, must apply his mind to the question as to whether it is in the interest of the institution and in public interest to appoint an Executive Officer and should not exercise his discretion mechanically.

The power to appoint an executive officer must be exercised with due application of mind, and any such appointment made by the competent authority without application of mind can be the subject matter of judicial review. (**K.V.Rama Sastry**[15]). In **Pavani Sridhara Rao**[14], the Supreme Court held:-

".....the Commissioner could appoint an Executive Officer for discharging the duties of such institution or endowment for exercising the powers and discharging the duties conferred on him by or under that Act. However, that power had to be exercised on relevant data and on necessary facts and material. It could not be exercised just offhand without there being any necessity for appointing an Executive Officer for the temple in public interest. Nothing could be pointed out from the record of this case by the learned counsel for the respondents as to why it was in the interest of the public and for better management of the institution, that an Executive Officer was to be appointed....."

The discretion conferred on the commissioner, under Section 8 of the Act, to appoint an executive officer, is required to be exercised for just and valid reasons. In **Consumer Action Group v. State of T.N,** the Supreme Court; held:-

"..... Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test of judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. ..... When such a wide power is given to any statutory authority including a delegatee then it is obligatory on the part of such authority to clearly record its reasons in the order itself for exercising such a power. Application of mind of such authority at that point of time could only be revealed when the order records its reasons. Even if the section is silent about recording of reasons, it is obligatory on the Government while passing orders under Section 113 to record the reasons....."

" When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra-statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act....."

The interest of the subject religious or charitable institution is paramount and the commissioner/competent authority to appoint executive officers has necessarily to examine the requirements of each individual charitable or religious institution and decide as to whether an executive officer is required to be appointed thereto. Appointment of executive officers, mechanically, solely on the basis of G.O.Ms.No. 433 dated 5.5.1993, would undoubtedly amount to non application of mind. Since, however, the impugned G.O. has merely prescribed the sanctioned strength of executive officers and has classified institutions for the purpose of appointment of executive officers and, in view of the interim orders passed by this court, no executive officer has as yet been appointed to the petitioner – institutions, it would meet the ends of justice and satisfy the requirements of law, if the Commissioner, (2nd respondent herein), is directed to examine the need for appointment of an executive officer to each of the petitioner – institutions, consider all relevant factors and to record the reasons for his decision.

The writ petitions are accordingly disposed of. There shall however be no order as to costs.

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16-12-2005

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Note:

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After the judgment was pronounced, Sri P.Srinivas, learned counsel for the petitioner would refer to the proceedings of the

3rd respondent dated 14.09.2005, referred to in WPMP.No.27659 of 2005, to contend that without appointing an Executive Officer, the respondents have already initiated proceedings for appointment of a Manager, under Section 29 of the Act, to the first petitioner-Institution. The order in W.P.No.7347 of 1993, holding that before

an Executive Officer is appointed, the Commissioner is required to apply his mind, consider all relevant factors, examine the need for appointment of an Executive Officer to each individual institution and to record reasons for his decision in this regard would also apply to appointment of a Manager, since such an appointment, under Section 29 (5) (d) of Act 30 of 1987, is only in cases where no Executive Officer has been appointed to such an institution. Needless to state that the discretion, in appointment of Executive Officers/Managers for any religious or charitable institution, can be exercised only after application of mind on all relevant aspects by the competent authority concerned.

WPMP.No.27659 of 2005 is ordered accordingly.

_____ 16.12.2005

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